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EXAMINER

BYLCIW, STEPHEN

ART UNIT PAPER NUMBER

3623

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/849,448

Applicant(s)

DELURGIO ET AL.

Examiner

Stephen Bylcw

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date see attached.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Information disclosure sheets for application 09/849,448: 30 Sept 2003, 21 May 2001, 6 Aug 2001, 7 Sept 2001, 31 May 2002, 2 Sept 2003, 17 Feb 2004, 12 Jul 2004, 14 Sept 2004, 26 Oct 2004, 7 Feb 2005, and 31 May 2005.

DETAILED ACTION

1. This non-final office action is in response to the application filed in the United States on May 4, 2001. Claims 1-30 are pending in this application.

Information Disclosure Statement

2. The information disclosure statement filed September 2, 2003 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because a document (U.S. Patent 6,025,686 – Fernandez et al – 5/18/2000) does not exist. Perhaps the applicant intended U.S. Patent 6,052,686 - Fernandez et al – 4/18/2000. The reference to U.S. Patent 6,025,686 has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Drawings

3. New corrected drawings (Figures 6 - 38) in compliance with 37 CFR 1.121(d) are required in this application because they are difficult to read. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings

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are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

In addition, the title of Figure 4 has the word "Scenario" misspelled. The full title after the correction should be "Scenario/ Results Processor Details." Appropriate correction is required.

Specification

4. The disclosure is objected to because of the following informality: the application "Interface For Merchandise Price Optimization" has serial number 09/849,616. This serial number is missing in the specification in paragraph 1 (line 2).

Appropriate correction is required.

5. The use of the trademarks (example: paragraph 48 lines 11-12) has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology. All subsequent recitations are also rejected.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner that might adversely affect their validity as trademarks.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 9 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 9 and 26, they contain the trademark/trade name JAVA™.

Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe applets and, accordingly, the identification/description is indefinite.

In order to overcome this rejection it is respectfully suggested that the claims be amended to remove the trademark (JAVA™) and leave an appropriate generic name (example: applets). Appropriate correction is required.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 of co-pending application 09/849,621. This is a provisional double patenting rejection since the conflicting claims have not been patented.

Claims 1-3, 16, and 30 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of Delurgio - U.S. Patent 6,553,352 (Delurgio '352).

Although the conflicting claims are not identical, they are not patentably distinct from each other (MPEP § 802.01). The essential differences between the application and patent are whether

- the merchandizing optimization apparatus determines the optimal price or promotion plan; and
- the apparatus communicates via the Internet.

It is well known to one of ordinary skill in the art that a merchandizing optimization apparatus that evaluates promotion scenarios to maximize profit based on estimated demand for product(s) also determines an optimal price consistent with that plan because of the price sensitivity of demand. It is also well known to one of ordinary skill in the art that a merchandizing optimization apparatus to determine the optimal pricing to maximize profit based on activity based costs (demand chain costs) is also a merchandizing optimization tool to determine optimal promotion plans because promotion plans can be evaluated, particularly those based on price reductions (discounts) and supplier offers that reduce demand chain costs (activity based costs). The merchandizing optimization apparatuses disclosed by the applicant and Delurgio '352 consider supplier offers as part of their demand chain cost calculations because per the applicant's own admission demand chain costs include the costs incurred by retailers as they receive (acquire) products from suppliers (see applicant's paragraph 54 and Delurgio '352 column 8, lines 40-44). Accordingly, it would be obvious to one of ordinary skill in the art that the merchandizing optimization tool to determine optimal promotion plans can be considered a merchandizing optimization tool to determine optimal pricing (or vice-versa).

Furthermore, a note has been taken that the architecture of the applicant's apparatus is essentially equivalent to the architecture of the apparatus shown in Delurgio '352 (Applicant Figures 2-5 and Delurgio '352 Figures 2-5). The optimization

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engine architecture in Delurgio '352 also included a "promotion tool" (Delurgio '352, Figure 3).

It is also well known to one of ordinary skill in the art that pricing/ promotional plan systems (controllers, software, programs) can interact with users without exchanging data over the Internet. It would be obvious to a person of ordinary skill in the art to modify the apparatus described in claim 2 of Delurgio '352 so that the apparatus could be used on a computer with or without access to the Internet.

Claim 4 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 of Delurgio '352 for the same reasons as applied to applicant's claims 1-3 above for obviousness-type double patenting.

Claim 5 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 4 of Delurgio '352 for the same reasons as applied to applicant's claim 4 above for obviousness-type double patenting.

Claim 6 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 5 of Delurgio '352 for the same reasons as applied to applicant's claim 1-3 above for obviousness-type double patenting.

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Claim 7 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 6 of Delurgio '352 for the same reasons as applied to applicant's claim 6 above for obviousness-type double patenting.

Claim 8 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 7 of Delurgio '352 for the same reasons as applied to applicant's claim 6 above for obviousness-type double patenting.

Claim 9 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of Delurgio '352 for the same reasons as applied to applicant's claim 6 above for obviousness-type double patenting.

Claim 10 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 of Delurgio '352 for the same reasons as applied to applicant's claim 6 above for obviousness-type double patenting.

Claims 11 and 14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-18 of Delurgio '352 for the same reasons as applied to applicant's claim 6 above for obviousness-type double patenting. The essential additional differences between the application and the patent are the potential organization between the templates (forms, organized data fields) used to prescribe the optimization scenario.

Applicant claim 11 specifies a template for describing "promotion events" for definition of an optimization scenario. Delurgio '352 does not describe any input templates that use the words "promotional event." It is well known to one of ordinary skill in the art there are several items potentially used when prescribing a promotional plan scenario: the products involved with the promotion, location of the stores (and store groupings), promotion time period, rules that govern the ability to modify prices, and a figure of merit to optimize the promotion (profit, sales volume, revenue, profit margin, etc.). It is well known to one of ordinary skill in the art to utilize some or all the templates (category template, products template, locations template, time horizon template, at-large rules template, and strategy template) defined in Delurgio '352 to describe a promotional event to a price/ promotion plan optimizer system.

Claim 12 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-18 of Delurgio '352 for the same reasons as applied to applicant's claim 6 above for obviousness-type double patenting. The essential additional difference between the application and the patent is the disclosure of a potential supplier offer template in the application.

Applicant claim 12 specifies a template to prescribe "potential supplier offers" for definition of an optimization scenario. Delurgio '352 does not describe input templates explicitly use the terms: "potential supplier offers." It is well known to one of ordinary skill in the art that one example of a potential supplier is to allow a retailer to purchase a product for a reduced price for a temporary time period and that the activity based

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costing methodology considers the cost of the product to retailer when determining the demand chain costs used by the optimization system (see Delurgio '352 column 8 lines 41-45). It is obvious to one of ordinary skill in the art that a potential supplier offer could be defined by making available supplier offer cost information to the activity based cost engine in the optimization system used in Delurgio '352 and prescribing the time horizon and other promotional scenario information after slight changes to the input templates available (category template, products template, locations template, time horizon template, at-large rules template, and strategy template).

Claims 13 and 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 13-18 of Delurgio '352 for the same reasons as applied to applicant's claim 12 above for obviousness-type double patenting. The essential additional difference between the application and the patent is the disclosure of a promotion scenario configuration template in the application.

Applicant claim 13 specifies a "promotion scenario configuration" template to assign products to the promotional events, allow the specification of a forward buy method, rules that constrain the optimization and store capacities. Delurgio '352 does not explicitly specify a "promotion scenario configuration" template allowing the specification of a forward buy method. It is well known to one of ordinary skill in the art that a forward buy is associated with a promotion scenario when retailers buy goods from suppliers at a reduced rate for a limited time period. Delurgio '352 and the

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applicant's invention are analogous art in the field of financial optimization tools for retailers. It would be obvious to one of ordinary skill in the art that a forward buy method could be defined by making available updated cost information to the activity based cost engine in the optimization system used in Delurgio '352 and prescribing the time horizon and other promotional scenario information after slight changes to the input templates available (category template, products template, locations template, time horizon template, at-large rules template, and strategy template).

Claims 14 and 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 9 of Delurgio '352 for the same reasons as applied to applicant's claim 11 above for obviousness-type double patenting.

Claim 15 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 9 of Delurgio '352 for the same reasons as applied to applicant's claim 6 above for obviousness-type double patenting.

Claim 17 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of Delurgio '352 for the same reasons as applied to applicant's claim 15 above for obviousness-type double patenting.

Claims 18 and 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 20 of Delurgio '352 for the same reasons as applied to applicant's claims 1-3 above for obviousness-type double patenting.

Claim 19 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 29 of Delurgio '352 for the same reasons as applied to applicant's claim 18 above for obviousness-type double patenting.

Claim 20 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 32 of Delurgio '352 for the same reasons as applied to applicant's claim 19 above for obviousness-type double patenting.

Claim 21 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 33 of Delurgio '352 for the same reasons as applied to applicant's claim 20 above for obviousness-type double patenting.

Claim 22 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 30 of Delurgio '352 for the same reasons as applied to applicant's claim 19 above for obviousness-type double patenting.

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Claim 23 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 31 of Delurgio '352 for the same reasons as applied to applicant's claim 19 above for obviousness-type double patenting.

Claim 24 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 21 of Delurgio '352 for the same reasons as applied to applicant's claim 18 above for obviousness-type double patenting.

Claim 25 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 22 of Delurgio '352 for the same reasons as applied to applicant's claim 18 above for obviousness-type double patenting.

Claim 26 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 23 of Delurgio '352 for the same reasons as applied to applicant's claim 18 above for obviousness-type double patenting.

Claims 27-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20, 27-29 of Delurgio '352. Although the conflicting claims are not identical, they are not patentably distinct from each other (MPEP § 802.01). The essential differences between the patent and application are:

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- whether the merchandizing optimization apparatus determines the optimal price or promotion plan (see reasoning above for applicant claim 18).
- a template (form, organized data fields) for prescribing supplier offers and forward buys.
- a template (form, organized data fields) for prescribing store merchandizing capacities.

It is obvious to one of ordinary skill in the art that as both the application and patent describe merchandizing optimization systems that calculate activity based costs that there must be a template (form, organized data fields) to enable the users of the system to convey supplier offer information (updates, changes) to the activity based costing (demand chain costing) calculation engine.

It is obvious to one of ordinary skill in the art that the amount of inventory on-hand by a retailer is a significant factor in determining the profitability of a promotion plan/ price plan. Accordingly, it would be obvious to one of ordinary skill in the art to include a template (form, organized data fields) to enable the users of the system to specify the timing, quantities, and price of supplier shipments (supplier offers and forward buys) to the retailer from suppliers during the period of analysis.

It is obvious to one of ordinary skill in the art that not all store locations can accommodate every promotional scenario (for example a large swing in units sold as the inventory required for some products might not be accommodated for each store) and that rules and constraints are used to keep optimization solutions within pragmatic

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ranges. It is obvious to one of ordinary skill in the art that users of the systems described in the application and patent would have the ability to constrain the optimization so that the stores selected for the optimization scenario could accommodate the recommended solution.

Claim 30 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 26 of Delurgio '352. Although the conflicting claims are not identical, they are not patentably distinct from each other (MPEP § 802.01) according to the reasoning applied above for claim 18.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 1-12, 15, and 18-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouimet (U.S. Patent 6,094,641) in view of Morgan (U.S. Patent 5,799,286).**

Regarding claims 1, 11-12, 18, and 27, Ouimet teaches a computerized merchandizing optimization modeling system (apparatus, device, interface, computer-implemented method) to determine the optimum prices/ demand/ promotion for product(s) for sale. The merchandizing optimization system comprises:

- A program (scenario/ result processor, scenario controller, apparatus, device) to enable the user to prescribe an optimization scenario and be presented with the determined optimum price/ promotion plan after the execution of the optimization scenario (column 3 line 43 through Column 4, line 23).
- A sequence of data entry templates presented to the user whereby the user specifies an optimization scenario, including promotional events (column 3 line 48 through column 4 line 15, column 4 line 65 through column 5 line 11).
- An optimum promotion plan based on product demand and cost calculations (column 4, lines 10-14, 16-19, and 42-44)

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- A program (input/ output processor, scenario controller, apparatus, device) to acquire data relating to the optimization scenario from the user and then later distributes the results to the user in a format consistent with the optimization determination/ results (column 3, lines 3-9 and column 4, lines 21-23).
- Considers a cost calculation when optimizing promotion and pricing for profit (column 6 lines 2-5).

Ouimet does not teach the method of calculating costs via an activity-based costing methodology.

Morgan discloses an automated activity-based management system (engine, module, program, controller) designed to:

- Calculate product costs (column 20, lines 24-35).
- Specify (enable, input) product information/ supplier offers (for example, changes/ updates in the cost per unit to purchase product from suppliers) via a template (graphical user interface, organized entry fields) (column 3 line 64 through column 4 line 3, and column 6 lines 43-45).

Ouimet and Morgan are in the analogous art of providing financial decision tools to businesses to improve their profitability. It would have been obvious to a person of ordinary skill in the art at the time of invention to combine the teachings of Ouimet and Morgan to determine the optimal price/ promotion plan using the more precise activity

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based costing program coupled to a template for specifying product costs/ supplier offers for the advantages of accuracy.

Regarding claims 2-3 and 20-21, Ouimet teaches a merchandizing optimization system that receives instructions via the Internet (column 3, lines 34-41). Information exchanged via the Internet inherently uses packet switched protocol and TCP/IP. The Internet refers specifically to the DARPA Internet and the TCP/IP protocols it uses. The Internet is a collection of packet-switching networks and routers that uses the TCP/IP protocol suit and functions as a single, cooperative virtual network (Visit URL <http://www.wdvl.com/Internet/> for more information about the Internet).

Regarding claims 4 and 22, Ouimet teaches a merchandizing optimization system where the user interactively provides and receives data to/ from the system (Column 4, line 35-39).

Regarding claims 5 and 23, Ouimet teaches a merchandizing optimization system where the input data is acquired from a source file and results data are distributed to a destination file designated by the user (Column 3, lines 17-26, 30-33, 36-40).

Regarding claim 6 and 15, Ouimet teaches a merchandizing optimization system that includes:

- a program (template controller, apparatus, device) to allow for prescription of optimization scenario and distribution of results (column 3 line 63 to column 4 line 2, column 4 lines 30-33, lines 39-42). In addition, it is obvious and well known in the art of computer-based optimization software programs that the scenario definition information would have to be in an organized format (template) suitable to be understood by a computer and configured to enable said user to prescribe scenario parameters.
- A program (command interpreter, apparatus, device) to extract user commands from the first templates (forms, organized data fields) and configured to populate the result templates (column 3, lines 48-51, lines 58-60, lines 63-66).
- A template (graphical user interface, form, organized data field) for providing result data corresponding to the optimization scenario (figure 9).

Regarding claims 7-9 and 24-26, Ouimet teaches a merchandizing optimization system that receives instructions via the Internet (Column 3, lines 34-41). Ouimet does not teach that input/ output information via templates (forms, organized data fields) is provided via hypertext markup language (HTML), extensible markup language (XML), or JAVA™ applets. Official action is taken that it is well known to one of ordinary skill in the art to create input/ output templates (forms, organized data fields) to exchange information over the Internet. It would be obvious to one of ordinary skill in the art at the time of invention to provide input/ output templates (forms, organized data fields) using

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HTML, XLM, or JAVA™ applets to exchange information over the Internet between the user and the merchandizing optimization system.

Regarding claims 10 and 19, it is old and well-known by a person of ordinary skill in the art of computer-based merchandizing optimization systems that the scenario definition information, input data and optimization results would have to be in organized format(s) (template(s), form field(s), etc) to be understood by a computer and configured to enable the user to understand the results.

10. Claims 13-14, 16-17, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouimet in view of Morgan as applied to claims 1-10 and 18-26 and in further view of Little (1975).

Regarding claims 13-14, 16-17, and 28-29, Ouimet and Morgan teach a merchandizing optimization system (apparatus, device, interface, computer-implemented method) to determine the optimum prices/ demand/ promotion for product(s) using an activity based costing model with a template (form, graphical user interface, organized data filed for specifying allowable/ valid supplier offers.

Ouimet and Morgan do not expressly teach a merchandizing optimization system that has a template (graphical user interface, form, organized input fields) that:

- Associates promotional events to products.
- Specifies a forward buy method.

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- Specifies rules that constrain the optimization scenario.
- Specifies store merchandizing capacities.
- Specifies a promotion scenario and a time period for which the optimization scenario is to be determined.

Little teaches a merchandizing optimization system that has a template (form, organized input fields) to:

- Associate promotional events to products (p. 632, Figure 1 and p. 633, lines 2-5).
- Considers a forward buy method (p. 640, lines 17-19).
- Specifies rules that constrain the optimization scenario (p. 637 equation 6).
- Specifies store merchandizing capabilities (p. 649, lines 35-40).
- Specifies a promotion scenario and a time period for which the optimization scenario is to be determined (p. 643, lines 17-20).

It is old and well known to one of ordinary skill in the art that result data could be displayed in templates (forms, organized data fields) and comprise desired promotion plans and supplier offers. It also is old and well known to one of ordinary skill in the art that the optimization results between a plurality of profit scenarios could be displayed as a multiple-bar histogram on a computer monitor.

Ouimet, Morgan, and Little are in the analogous art of providing financial planning tools. It would be obvious to one of ordinary skill in the art at the time of

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invention to combine the teachings of Ouimet, Morgan, and Little to create a merchandizing optimization system based on an accurate activity based costing that provides the user the ability to customize the optimization scenario for the advantage of convenience.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a) Cunningham (U.S. Patent 6,029,139) teaches a system and method of evaluating and optimizing promotional plans for products, segments of products, or categories of products.

b) Montgomery, A. "Creating Micro-Marketing Pricing Strategies Using Supermarket Scanner Data" teaches how prices can be profitably customized at the store-level.

c) Abraham, M.M. "Promoter: An Automated Promotion Evaluation System," teaches a system and methodology for evaluating manufacturers' trade promotions which may be combined with consumer promotions.

d) Cerf, V.G. and R.E. Kahn, "A Protocol for Packet Network Interconnection," IEEE Transactions on Communications COM-22, May 1974, (pages 637-648) teaches the exchange of data over an Internet or network using a packet-switched protocol such as TCP/IP.

e) Berners-Lee, T. "Hypertext Markup Language 2.0 Working Paper," November 1995, (<http://ftp.ics.uci.edu/pub/ietf/html/rfc1866.txt>) teaches the method of creating templates for data input and/or output in hypertext markup language, commonly known as HTML

f) Bosak, J and World Wide Web Consortium. "Extensible Markup Language (XML)," December 1997, (<http://www.w3.org/TR/PR-xml-971208.html>) teaches the

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method of providing templates for data input and/or output using extensible markup language – XML.

g) Flanagan, D. "JavaScript: The Definitive Guide, 3rd Edition," published by O'Reilly in June 1998 with an ISBN of 1-56592-392-8, section 14.8) teaches the method or computer-based program that provides templates for data input and/or output using JAVA™ applets (see

h) Auerbach, A.A. - US Patent 3,017,610 - June 1962, (column 1, paragraph 1) teaches a method or computer-based apparatus that provides input data to a computer program via an electronic source file and distributes the optimization results from a computer program via a destination electronic file.

i) Abraham, M. "An Implemented System For Improving Promotion Productivity using Store Scanner Data," Marketing Science Vol. 12, No. 3, Summer 1993, pages 259, Table A) teaches sales changes from a baseline in terms of a percentage.

k) Buzzell, R.D. "The Costly Bargain of Trade Promotion," Harvard Business Review, March-April 1990 (p. 141-149) teaches the concept of forward buys.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Bylcw whose telephone number is 571-272-8125. The examiner can normally be reached on weekdays, 8AM-5PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 571-272-6729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SB SB – June 13, 2005


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